

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
STEVEN W. SAMPSON, TRUSTEE,

Plaintiff,

-against-

JAMES D. ROBINSON III, LEWIS B. CAMPBELL,
JAMES M. CORNELIUS, LAURIE H. GLIMCHER,
M.D., VICKI L. SATO, PH.D., LEIF JOHANSSON,
LOUIS J. FREEH, MICHAEL GROBSTEIN, and
R. SANDERS WILLIAMS, M.D.,

Defendants,

and

BRISTOL-MYERS SQUIBB COMPANY,

Nominal Defendant.
-----X

07 Civ. 6890 (PAC)

**FILED
ELECTRONICALLY**

**DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION
TO MOTION FOR AN ORDER APPOINTING
LEAD DERIVATIVE COUNSEL**

Lorin L. Reisner
Michael R. Potenza
Timothy T. Howard
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, New York 10022
(212) 909-6000

Attorneys for Nominal Defendant Bristol-Myers Squibb Company

Kenneth Conboy
LATHAM & WATKINS LLP
885 Third Avenue
New York, New York 10022
(212) 906-1200

Attorneys for Defendants James D. Robinson III, Lewis B. Campbell, James M. Cornelius, Laurie H. Glimcher, M.D., Vicki L. Sato, Ph.D., Leif Johansson, Louis J. Freeh, Michael Grobstein and R. Sanders Williams, M.D.

This memorandum of law is submitted by nominal defendant Bristol-Myers Squibb Company (“BMS” or the “Company”) and the individual members of the Board of Directors of BMS named as defendants (the “Director Defendants”) in opposition to plaintiff’s motion for an order appointing lead derivative counsel. For the reasons set forth below, there is no proper basis for the requested relief.

BACKGROUND

This action was filed on July 31, 2007 as a purported shareholder derivative action. On August 27, 2007, defendants submitted a letter to the Court seeking a pre-motion conference in advance of filing a motion to dismiss. As outlined in that letter, the complaint is facially deficient because it fails to establish subject-matter jurisdiction for the exclusively state-law claims asserted and because plaintiff failed to make a pre-litigation demand on the Board of Directors or otherwise satisfy the requirements of Fed. R. Civ. P. 23.1.

At a pre-motion conference with the Court on August 30, 2007, counsel for plaintiff represented that plaintiff intended to file an amended complaint. The Court set deadlines of October 15, 2007 for the filing of any amended complaint and October 29, 2007 for the filing of a motion to dismiss.

ARGUMENT

There is no need for the appointment of “lead derivative counsel” based on the current status of the proceedings. As plaintiff concedes, Rule 23.1 “contains no provision for the appointment of Lead Derivative Counsel.” Pl. Mem. at 3. Moreover, the nearly

40-year-old case cited by plaintiff, *id.*, (citing *MacAlister v. Guterma*, 263 F.2d 65 (2d Cir. 1958)), does not support the proposition that courts “routinely” appoint Lead Derivative Counsel in these circumstances.

Appointment of Lead Derivative Counsel is entirely unnecessary. There is only one derivative action pending in this Court relating to the subject matter of this action. Defendants are unaware of any other person or party that intends to bring a similar derivative action. Most importantly, the complaint is fundamentally defective and defendants do not believe that any amended complaint can cure these basic defects. Accordingly, the Court need not establish any “leadership” apparatus for this single federal derivative action. The interests of judicial economy and preservation of legal resources counsel in favor of proceeding to disposition of the anticipated motion to dismiss without imposing an unnecessary bureaucratic and administrative framework on this litigation.

CONCLUSION

For the reasons set forth above, plaintiff's motion for an order appointing lead derivative counsel should be denied.

Respectfully submitted,

Dated: New York, New York
September 14, 2007

DEBEVOISE & PLIMPTON LLP

By: /s/ Lorin L. Reisner

Lorin L. Reisner
Michael R. Potenza
Timothy T. Howard
919 Third Avenue
New York, New York 10022
(212) 909-6000 (telephone)
(212) 909-6836 (fax)

*Attorneys for Nominal Defendant Bristol-Myers
Squibb Company*

LATHAM & WATKINS LLP

By: /s/ Kenneth Conboy

Kenneth Conboy
885 Third Avenue
New York, New York 10022
(212) 906-1200 (telephone)
(212) 751-4864 (fax)

*Attorneys for Defendants James D. Robinson
III, Lewis B. Campbell, James M. Cornelius,
Laurie H. Glimcher, M.D., Vicki L. Sato, Ph.D,
Leif Johansson, Louis J. Freeh, Michael
Grobstein and R. Sanders Williams, M.D.*